



Nassau County

Department of \_\_\_\_\_

324-15

**Staff Summary**

Subject Dedication of Sanitary Sewer
Department Department of Public Works
Department Head Name Shila Shah - Gamaudias
Department Head Signature <i>[Signature]</i>
Project Manager Name N/A

Date July 23, 2015
Vendor Name N/A
Contract Number N/A
Contract Manager Name N/A

Proposed Legislative Action					
	To	Date	Approval	Info	Other
	Assgn Comm				
	Rules Comm				
	Full Leg				

Internal Approvals			
Date & Init	Approval	Date & Init	Approval
7/23/15 JS	Dept. Head	8/17/15 JS	Legislative Affairs
8/17/15 JS	Budget	8/17/15 JS	County Atty.
8/17/15 JS	Deputy C.E.	8/17/15 JS	County Exec.

**Narrative****Purpose:**

This is a resolution to accept dedication from the developer RXR North Hills Phase I Owner LLC of a sanitary sewer which services a new 244 unit condominium located in the Village of North Hills, County of Nassau County. One branch of the sanitary sewer consists of approximately 519 feet of pipe in the right of way of New Hyde Park Road and the other consists of approximately 316 feet of pipe in an existing County easement all located in the Village of North Hills.

**Discussion:**

The Department of Public Works has inspected the sanitary sewer and has determined that the sanitary sewer is acceptable and should be added to the County system as indicated on the attached memo dated May 28, 2015.

**Impact on Funding:**

There is no impact as the proposed dedication is for no consideration.

**Recommendation:**

That the resolution be submitted to the Legislature for their consideration.

2015 AUG 18 P 1:54

RECEIVED  
NASSAU COUNTY  
CLERK OF THE LEGISLATURE

RESOLUTION NO. 2015

AUTHORIZING THE COUNTY EXECUTIVE TO ACCEPT ON BEHALF OF THE COUNTY OF NASSAU THE DEDICATION OF CERTAIN SANITARY SEWER LINES CONSTRUCTED IN THE BED OF NEW HYDE PARK ROAD AND WITHIN AN EXISTING COUNTY EASEMENT IN THE VILLAGE OF NORTH HILLS, COUNTY OF NASSAU, STATE OF NEW YORK.

Approved *[Signature]*  
Deputy County Attorney

RECEIVED  
NASSAU COUNTY  
CLERK OF THE LEGAL/TITLE  
2015 AUG 18 P 1:00

WHEREAS, RXR North Hills Phase I Owner, LLC has constructed and installed approximately 519 feet of sanitary sewer line in the bed of New Hyde Park Road and approximately 316 feet of sanitary sewer line in an existing County easement all located in the Village of North Hills, County of Nassau, New York, and

WHEREAS, RXR North Hills Phase I Owner, LLC has offered to dedicate said sanitary sewer lines to the County of Nassau and

WHEREAS, the Nassau County Department of Public Works has inspected the installed sewer lines and has approved the construction on or about May 28, 2015; now therefore be it

RESOLVED, that the County Executive on behalf of the County of Nassau be and he is authorized to accept dedication of said sewer lines from RXR North Hills Phase I Owner, LLC and to execute any documents necessary to effectuate said dedication.

**COUNTY OF NASSAU**

**INTERDEPARTMENTAL MEMO**

TO: CLERK OF THE NASSAU COUNTY LEGISLATURE

FROM: COUNTY ATTORNEY

DATE: JULY 31, 2015

SUBJECT: RESOLUTION: SEWER DEDICATION

AUTHORIZING THE COUNTY EXECUTIVE TO ACCEPT ON BEHALF OF THE COUNTY OF NASSAU THE DEDICATION OF CERTAIN SANITARY SEWER LINES CONSTRUCTED IN THE BED OF NEW HYDE PARK ROAD AND WITHIN AN EXISTING COUNTY EASEMENT IN THE VILLAGE OF NORTH HILLS, COUNTY OF NASSAU, STATE OF NEW YORK.

The above described documents are forwarded to you for review, and if acceptable, for inclusion upon the calendar of the Nassau County Legislature.

CARNELL T. FOSKEY  
COUNTY ATTORNEY

By: 

Nicholas P. Sarandis  
Deputy County Attorney

**COUNTY OF NASSAU**  
**DEPARTMENT OF PUBLIC WORKS**  
**Inter-Departmental Memo**

**TO:** Office of the County Attorney  
Att: Nicholas P. Sarandis-Deputy County Attorney

**FROM:** Department of Public Works

**DATE:** May 28, 2015

**SUBJECT:** RXR North Hills  
AKA-Residences at North Hills  
Incorporated Village of North Hills, New York  
Sanitary Sewer Dedication Agreement

Please be advised that the sanitary sewer at the above-referenced location has been installed, inspected, and accepted by the Nassau County Department of Public Works.

Kindly proceed with Legislative approval of said agreement.

If further assistance is needed, please contact Mr. Peter Pyne at 1-6843.



Shila Shah-Gavnoudias  
Commissioner

SSG:KGA:JLD:cs

c: Kenneth G. Arnold, Assistant to Commissioner  
Joseph L. Davenport, Unit Head, Water/Wastewater Engineering  
Peter E. Pyne, Civil Engineer III



CONSTRUCTION, EASEMENT AND INDEMNIFICATION AGREEMENT

AGREEMENT entered into this \_\_\_\_\_ day of August, 2014  
between COUNTY OF NASSAU (hereinafter "COUNTY"), a municipal corporation of the  
State of New York with its principal office at One West Street, Mineola, New York 11501

- and -

RXR North Hills Phase I Owner LLC, (hereinafter "DEVELOPER"), having its principal  
office at 625 RXR Plaza Uniondale, New York 11556.

WITNESSETH:

WHEREAS, DEVELOPER plans the construction of a new 244 unit  
condominium subdivision at Section 8, Block A, Lots 889, 901, 902, 903, 904, 905, 906A,  
and 906B, situated at the Incorporated Village of North Hills, Nassau County, New York;  
and

WHEREAS, said construction is located within the Nassau County Sewer and  
Storm Water Resources District; and

WHEREAS, DEVELOPER plans the construction and installation of certain  
sanitary sewer lines (hereinafter "lines") in, on, under, over or through a portion of the  
above described property in anticipation that the lines will eventually be connected to  
COUNTY's sewerage facilities, said lines dedicated to the County; and

WHEREAS, DEVELOPER plans the construction and installation of certain  
sanitary sewer lines (hereinafter "lines") in, on, under, over or through an existing roadway  
owned by the County of Nassau known as New Hyde Park Road in anticipation that the  
lines will eventually be connected to COUNTY's sewerage facilities and be dedicated to  
COUNTY;

NOW THEREFORE, in consideration of the mutual covenants contained  
herein, it is agreed as follows:

1. DEVELOPER at its sole cost and expense shall construct lines at the  
location shown on the map attached hereto and made a part hereof, a copy of which is  
filed with the Nassau County Department of Public Works (hereinafter "Public Works"),  
entitled:

Improvement Plans for  
Residences at North Hills

<u>STREETS</u>	<u>FEET OF PIPE</u>	<u>DIAMETER OF PIPE</u>
New Hyde Park Rd.	519 feet	8 inch
Existing Easement	316 feet	8 inch

Said construction shall include all manholes, spurs and/or building connections (a separate  
permit is required from COUNTY for such connections), and any appurtenances as  
required by the plan (described in Paragraph 2 hereof), in accordance with COUNTY's  
standards and specifications. DEVELOPER agrees that should COUNTY for any reason  
whatsoever not be able to provide connection to sewerage facilities as contemplated by  
this Agreement or as shown on the attached map, (I) DEVELOPER will make no monetary  
claim against COUNTY for any cost, expense, loss, claim or damage incurred by  
DEVELOPER, and (II) COUNTY will have no liability or responsibility to DEVELOPER for  
any such cost, expense, loss, claim or damage.

2. All lines, manhole structures and other appurtenances shall be  
constructed at the locations and in the manner prescribed in DEVELOPER's construction  
plan approved by COUNTY, and in strict accordance with COUNTY standards and  
specifications. Building connection piping shall also be constructed in strict accordance  
with COUNTY standards and specifications. All construction provided for herein shall at all  
times be subject to examination by COUNTY's inspectors. DEVELOPER's Professional

Engineer shall provide the contractor and COUNTY's inspectors with all survey information in the field which is required to construct the lines and appurtenances in accordance with the plan. COUNTY's inspections may include the use of video equipment. DEVELOPER agrees that examination by COUNTY inspectors shall not relieve DEVELOPER of its obligations hereunder.

3. DEVELOPER agrees to engage an individual or organization with proven experience and ability to perform the type of construction provided for herein, which individual or organization shall be acceptable to, and be approved in writing by COUNTY's Commissioner of Public Works or his designee. No construction shall commence until such written approval is issued by COUNTY's Commissioner of Public Works or his designee. DEVELOPER further agrees that COUNTY's approval of an individual or organization to construct the lines shall not under any circumstance make COUNTY responsible or liable in any manner for any expense incurred by DEVELOPER in connection with said construction by such individual or organization, nor relieve DEVELOPER of its obligations hereunder.

4. DEVELOPER shall submit a schedule of its operations so that the location and order of progression of the construction may be approved by Public Works, and all construction must be in accordance with accepted, modern methods. Materials to be incorporated in the construction and the vendors thereof shall be selected from those approved by Public Works.

5. DEVELOPER shall submit to COUNTY a certified copy of "As Built" drawings (one mylar, two paper and one digital format) of the lines prepared by a licensed engineer or land surveyor, prior to COUNTY'S final acceptance (described in Paragraph 8 hereof) of the lines. COUNTY's acceptance of said drawings is subject to Public Works' approval as to form, scale detail, sheet size and other requirements.

6. It is understood and agreed that no construction of lines is permitted unless and until this Agreement is executed by COUNTY.

7. It is understood that conditional acceptance (described in Paragraph 8 hereof) and final acceptance of the lines is contingent upon all work having been completed to Public Works' standards and specifications as determined solely by Public Works at the time of such acceptances, whether conditional and/or final. It is understood that the standards and specifications of Public Works are subject to change at any time prior to COUNTY's final acceptance of the lines, and that the cost of meeting any such changed standards and/or specifications shall be borne solely by DEVELOPER. It is understood that DEVELOPER remains responsible in all ways for the lines until their final acceptance by COUNTY, at which time the lines shall be maintained by COUNTY as part of its sanitary sewer system.

8. DEVELOPER will offer the lines at no expense to COUNTY upon completion of same. COUNTY's acceptance of the lines shall take effect in two stages. Upon a satisfactory Public Works' inspection of the completed lines and upon the issuance by the Commissioner of Public Works or his designee of a letter confirming same, COUNTY shall conditionally accept the lines. No permit may be issued for any individual building connection until the Commissioner of Public Works or his designee has issued such letter conditionally accepting the lines. After all third party easements are delivered to and accepted by COUNTY in accordance with Paragraph 17 hereof, and after DEVELOPER provides to COUNTY documentation from the municipality having jurisdiction that such municipality has accepted DEVELOPER's offer of dedication of the road(s) containing the lines, then in the event the lines pass a final Public Works' inspection, the Commissioner of Public Works or his designee shall so notify DEVELOPER by letter, which letter shall also recommend final acceptance of the lines by COUNTY. DEVELOPER shall then formally offer the lines for dedication to COUNTY, such dedication to be approved by Ordinance or Resolution of the Nassau County Legislature. Prior to approving the acceptance of the dedication, the County Legislature shall review the recommendation of the Commissioner of Public Works or his designee. The Commissioner of Public Works or his designee shall have sole authority to recommend to the County Legislature the final acceptance of the lines and the acceptance of DEVELOPER's offer of dedication.

9. DEVELOPER shall in all ways be responsible to repair, replace and

maintain the lines until such time as COUNTY's final acceptance of them. This responsibility to repair, replace and maintain includes a guarantee that, until their final acceptance by COUNTY, the integrity of the lines shall be maintained by DEVELOPER. The duties enumerated in this paragraph shall be secured by the guarantee provision contained hereinafter. This guarantee shall remain in effect until such time as COUNTY agrees to release of same, which release shall not be unreasonably withheld after COUNTY's final acceptance of the lines. Should DEVELOPER fail to so repair, replace and/or maintain the lines in accordance with Public Works' standards, and should DEVELOPER fail to cure such default within thirty (30) days after receipt of notice from Public Works, COUNTY may undertake or cause to have undertaken said repair, replacement and/or maintenance. Any amount expended by COUNTY, including costs of inspection, etc., shall be reimbursed by DEVELOPER either directly or through the escrow monies and/or bonds as detailed hereinafter. Said amounts due billed to DEVELOPER shall be paid promptly and shall be considered a lien secured by the property of DEVELOPER, including but not limited to the development which is the subject location of this Agreement. If litigation is commenced to recover from DEVELOPER the cost to repair and inspect, DEVELOPER shall also be liable to pay COUNTY's reasonable attorneys' fees, costs and disbursements incurred in connection with the litigation.

10. DEVELOPER at its own cost and expense shall secure any and all necessary permits, and shall abide by the rules and regulations of any municipality or agency having jurisdiction over the subject property.

11. DEVELOPER, its assigns and successors, agree to defend, indemnify and hold COUNTY harmless from any and all liability, loss, damages, costs or expenses which at any time occur or are claimed to have occurred at the subject location until such time as COUNTY's final acceptance of the lines, whether such liability, loss, damages, etc., be on behalf of DEVELOPER, COUNTY and/or its agents, representatives, employees, etc., or on behalf of a third party, and whether such liability, loss, damages, etc., involve personal injury and/or property damage. COUNTY is to be in no way responsible for any damages or injury arising from any cause whatsoever.

12. DEVELOPER shall obtain and maintain General Liability and Workers' Compensation insurance issued by insurers licensed to do business in New York State. The minimum General Liability policy limit shall be Two Million (\$2,000,000) Dollars per occurrence, personal Bodily Injury and Property Damage combined. Certificate(s) of DEVELOPER's Liability and Workers' Compensation insurance and the policy for COUNTY shall be delivered to COUNTY concurrently with DEVELOPER's execution and delivery of this Agreement. Certificate(s) evidencing DEVELOPER's insurance shall contain an agreement by the issuer that the policy will not be cancelled, expired or terminated without thirty (30) days prior notice to COUNTY. At least thirty (30) days prior to such expiration of the original policy or any renewal thereof, a new certificate of the renewal of such insurance, containing an agreement by the issuer that the insurance will not be cancelled, etc., without thirty (30) days prior notice to COUNTY, shall be delivered to COUNTY. In addition, DEVELOPER shall provide to COUNTY proof that its Engineer maintains Professional Liability insurance. The insurance provisions contained herein shall be maintained until such time as COUNTY's final acceptance of the lines.

13. In the event of transfer of title by DEVELOPER or any subsequent owner, such new owner shall provide COUNTY with insurance in the amount and form set forth hereinabove, which shall be acceptable to and approved by COUNTY. Failure to provide such insurance shall place owner in violation of this Agreement. Any expense incurred by COUNTY, including but not limited to legal expenses, due to the failure of DEVELOPER, its successors and assigns to provide insurance shall be reimbursed to COUNTY by DEVELOPER or any subsequent owner without need for legal action, and shall be secured by the guarantee provisions contained herein. Such new owner, by accepting a deed to the subject property, assumes all obligations of DEVELOPER under the terms of this Agreement.

14. The assumption by a subsequent owner of the obligations and liability imposed herein shall not relieve DEVELOPER or any subsequent owner of any liability for acts or omissions which may have occurred while such owner held title to the subject property.

15. Upon COUNTY's conditional acceptance of the lines, DEVELOPER grants unto COUNTY a temporary easement over the entire length of the lines. Said easement shall include a right of ingress and egress and shall also include necessary space to perform any function associated with the lines. This easement is in no way intended to create in COUNTY a responsibility for the lines prior to their final acceptance by COUNTY; rather, the intent of this easement is to facilitate COUNTY's access to the lines should DEVELOPER fail to perform fully in accordance with the terms of this Agreement, as determined solely by COUNTY's Commissioner of Public Works or his designee. This easement shall not become extant unless and until the lines are conditionally accepted by COUNTY, and shall terminate upon COUNTY's final acceptance of the lines.

16. DEVELOPER agrees to guarantee its performance both as to construction and maintenance of the lines. DEVELOPER shall secure this guarantee in the sum of \$330,000.00. A sum of \$33,000.00, which is equal to 10% of the total guarantee, shall be provided in the form of a certified check payable to County of Nassau, which check shall be delivered to COUNTY concurrently with DEVELOPER's execution and delivery of this Agreement. Such check shall be deposited with the Treasurer of Nassau County (hereinafter "Treasurer") who shall hold this sum in an Escrow Account. This sum shall be retained by Treasurer in accordance with standard procedures of that office. Any interest which accrues to the Escrow Account shall be retained by Treasurer to help defray the costs of its maintenance. DEVELOPER shall be entitled to any interest in excess of those amounts retained by Treasurer for the maintenance of the Escrow Account. DEVELOPER specifically relinquishes any right, title or claim to that portion of the interest retained by Treasurer. DEVELOPER shall provide to COUNTY two surety bonds to guarantee its performance in accordance herewith, which bonds shall be delivered to COUNTY concurrently with DEVELOPER's execution and delivery of this Agreement. These bonds together with the Escrow Account shall comprise the total guarantee amount. The first bond, a Performance or Construction Bond, shall be in the amount of \$132,000.00 to secure construction of the lines. The second bond, a Maintenance Bond, shall be in the amount of \$165,000.00 to secure DEVELOPER's obligation to maintain, repair and restore the lines as provided for herein. These bonds are subject to COUNTY's approval prior to COUNTY's accepting them. The Construction Bond shall remain in effect until COUNTY's conditional acceptance of the lines. The Maintenance Bond and Escrow Account shall remain in effect until COUNTY's final acceptance of the lines. The Escrow Account maintained by Treasurer may be invaded by COUNTY to offset all costs of repair or maintenance or other expenses which are the responsibility of DEVELOPER hereunder but which DEVELOPER fails to perform, thereby causing COUNTY to act in DEVELOPER's stead. In addition, the bonds described above shall secure performance as stated in this Agreement. Any invasion of the Escrow Account shall be at the sole discretion of the Commissioner of Public Works or his designee. DEVELOPER specifically agrees that no action shall be maintained for the recovery of any sum in excess of that which remains with Treasurer, such sum having been reduced by any interest retained by Treasurer, as well as by any sum retained by COUNTY under its right of invasion specifically granted herein. Should DEVELOPER maintain any such action, DEVELOPER will reimburse COUNTY for any and all costs including legal fees associated with the defense of such action. When construction of the lines is completed, and after DEVELOPER has submitted and Public Works has accepted all easements in accordance with Paragraph 17 hereof, DEVELOPER may request in writing a preliminary Public Works' inspection of the lines and release of the Construction Bond. In the event the lines pass Public Works' preliminary inspection, COUNTY will conditionally accept the lines and release the Construction Bond. In lieu of a Public Works' preliminary inspection, Public Works may, at its election, require written certification from DEVELOPER's Professional Engineer that the lines have been completed to COUNTY standards and specifications in accordance with the plan. When the municipality having jurisdiction has accepted dedication of the road(s) containing the lines, as evidenced by a copy of a Resolution or other document indicating such acceptance provided to COUNTY by DEVELOPER, DEVELOPER may request in writing a final Public Works' inspection of the lines and release of the Maintenance Bond and Escrow Account. In lieu of a Public Works' final inspection, Public Works may, at its election, require written certification from DEVELOPER's Professional Engineer that the lines have been completed to COUNTY standards and specifications in accordance with the plan. DEVELOPER also understands and agrees that it must make separate written application to Treasurer for release of the Escrow Account. In the event the lines pass Public Works' final inspection,



the Commissioner of Public Works shall so notify DEVELOPER by letter, by which letter the Commissioner shall also recommend that DEVELOPER make a formal offer of dedication of the lines to COUNTY. COUNTY shall provide and DEVELOPER shall execute an instrument facilitating such offer of dedication. DEVELOPER understands that such offer of dedication shall be reviewed and acted upon by the Nassau County Legislature in accordance with Paragraph 8 hereof. Legislative authorization to accept DEVELOPER's offer of dedication shall constitute COUNTY's final acceptance of the lines. COUNTY shall not unreasonably withhold releases of the bonds and Escrow Account after DEVELOPER has fully performed all responsibilities enumerated herein in the discretion of COUNTY and its Commissioner of Public Works, and after COUNTY's final acceptance of the lines. DEVELOPER agrees that all bonds shall contain a provision requiring notice to COUNTY of the expiration of any bond forty-five (45) days prior to such expiration. This provision shall also pertain to any renewal of any bond required in accordance herewith.

17. Where lines constructed in accordance with this Agreement pass in, on, over, under or through the property of a party (hereinafter "GRANTOR") other than COUNTY or DEVELOPER, DEVELOPER at its sole cost and expense shall execute or cause to have executed any and all easements in favor of COUNTY necessary for the installation, maintenance and/or repair of the lines on such property. Any such easement shall be delivered concurrently with execution and delivery of this Agreement free and clear of any mortgage(s) which may encumber the land of which the easement is a part. Any such easement is subject to COUNTY's approval and acceptance, and must contain wording consistent with the provisions herein, including but not limited to insurance and indemnification. DEVELOPER understands that COUNTY is not obligated to accept the lines, either conditionally or finally, unless and until any and all easements are provided to and accepted by COUNTY. GRANTOR shall sign this Agreement, and expressly agrees that such signature shall constitute an irrevocable offer of such easement to COUNTY. GRANTOR shall in no way be responsible for the construction, repair or maintenance of the lines; rather, it is the intent of this paragraph that COUNTY be provided with any and all easements necessary for the operation of its sewer system, including the subject lines.

18. DEVELOPER, concurrently with execution and delivery of this Agreement, shall provide to COUNTY a check payable to County of Nassau in the amount of \$6,600.00 as a non-refundable fee which represents 2% of the guarantee amount hereinabove indicated. Such amount shall help defray normal and customary expenses incurred by COUNTY, including but not limited to inspection and administration costs.

19. This Agreement shall be perpetual and shall run with the land, and shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of each of the parties hereto.

20. DEVELOPER warrants that it is not in arrears to COUNTY upon debt or contract, and that it is not in default as Surety, Contractor or otherwise concerning any obligation to COUNTY.

21. This Agreement shall be recorded by County of Nassau, the Grantee/Indemnatee herein.

22. This instrument constitutes the entire agreement of the parties. All discussions, understandings and concurrences are merged into or superseded by this Agreement. This Agreement fully and completely expresses the intent of COUNTY and DEVELOPER, and shall not be modified or amended except by written agreement executed by COUNTY and DEVELOPER. DEVELOPER understands and agrees that no representation of any kind whatsoever has been made to it other than as appears in this Agreement, that it has not relied on such representation, and that no claim that it has made such reliance may be maintained at any time nor for any purpose.

IN WITNESS WHEREOF, the respective parties have caused this instrument to be duly executed this day and year first written above.

COUNTY OF NASSAU

By:

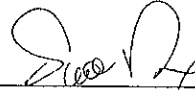
County Executive

Approved as per charter:

RXR North Hills Phase I Owner LLC

Deputy County Attorney

By:



Print name SCOTT REHLER

AUTHORIZED PERSON  
Title

Approved:

Commissioner  
Department of Public Works

Comptroller

Insurance Section

GRANTOR

By:

Print name